

AMENDED IN ASSEMBLY JUNE 19, 2014

AMENDED IN SENATE MAY 20, 2014

AMENDED IN SENATE MAY 14, 2014

AMENDED IN SENATE APRIL 23, 2014

## SENATE BILL

**No. 1193**

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**Introduced by Senator Evans**

February 20, 2014

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An act to amend ~~Sections 11473.5 and 11479 of~~ *Section 11479 of, and to add Section 11362.85 to, the Health and Safety Code, relating to controlled substances.*

### LEGISLATIVE COUNSEL'S DIGEST

SB 1193, as amended, Evans. Controlled substances: destruction of seized marijuana: cause of action.

(1) Existing law, the Uniform Controlled Substances Act, includes provisions authorizing the forfeiture and seizure of property involved in, or purchased with the proceeds from, a controlled substance offense. Existing law authorizes the destruction of seized substances suspected to be controlled substances in excess of 10 pounds in gross weight, subject to specified requirements.

Existing law requires that, prior to destruction of a suspected controlled substance, the law enforcement agency take at least 5 random and representative samples, for evidentiary purposes, from the total amount of suspected controlled substances to be destroyed in addition to the 10 pounds the law enforcement agency is required to retain.

Existing law requires, when the suspected controlled substance consists of growing or harvested marijuana plants, at least one 10-pound sample (which may include stalks, branches, or leaves) and 5

representative samples consisting of leaves or buds to be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed by the law enforcement agency.

This bill would instead require that, prior to the destruction of growing or harvested marijuana plants, the law enforcement agency take at least one 2-pound sample and 5 random and representative samples, and would authorize the agency to destroy the remainder. ~~The bill would require that counsel for the defendant have an opportunity to examine the 2-pound sample and 5 representative samples for 30 days from the date the growing or harvested marijuana was seized if there are criminal proceedings pending that pertain to the seized marijuana to be destroyed. By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.~~

(2) Existing law requires all seizures of controlled substances, instruments, or paraphernalia used for unlawfully using or administering a controlled substance that are in the possession of a city, county, or state official as a result of a case in which no trial was had or which has been disposed of by way of dismissal or otherwise than by way of conviction be destroyed by order of the court unless the court finds that the controlled substances, instruments, or paraphernalia were lawfully possessed by the defendant.

This bill would require that any marijuana, instrument, or paraphernalia seized that was lawfully possessed by a defendant be returned to the defendant upon the order of the court if the case is dismissed or the defendant is acquitted based on a defense or protection provided in the Compassionate Use Act of 1996 or the Medical Marijuana Program, as provided. If the marijuana, instrument, or paraphernalia that was lawfully possessed by the defendant was damaged or destroyed, the bill would entitle the defendant to receive reasonable compensation for the damage or loss.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 11362.85 is added to the Health and*  
2 *Safety Code, to read:*

3     *11362.85. In a criminal prosecution in which the defendant*  
4 *was acquitted or the case dismissed based on a defense or*  
5 *protection provided under Section 11362.5 or this article, upon*  
6 *the order of the court, the following shall apply:*

7     *(a) Any marijuana, instrument, or paraphernalia seized in the*  
8 *case that was lawfully possessed by the defendant shall be returned*  
9 *to him or her.*

10    *(b) If any marijuana, instrument, or paraphernalia seized in the*  
11 *case that was lawfully possessed by the defendant was damaged*  
12 *or destroyed, the defendant shall receive reasonable compensation*  
13 *for the damage or loss.*

14    *(c) A claim pursuant to this subdivision shall be presented not*  
15 *later than six months after acquittal or dismissal in the case.*

16    ~~SECTION 1. Section 11473.5 of the Health and Safety Code~~  
17 ~~is amended to read:~~

18    ~~11473.5. (a) All seizures of controlled substances, instruments,~~  
19 ~~or paraphernalia used for unlawfully using or administering a~~  
20 ~~controlled substance that are in possession of a city, county, or~~  
21 ~~state official as found property, or as the result of a case in which~~  
22 ~~no trial was had or which has been disposed of by way of dismissal~~  
23 ~~or otherwise than by way of conviction, shall be destroyed by order~~  
24 ~~of the court, unless the court finds that the controlled substances,~~  
25 ~~instruments, or paraphernalia were lawfully possessed by the~~  
26 ~~defendant.~~

27    ~~(b) In a criminal prosecution in which the defendant was~~  
28 ~~acquitted or the case dismissed based on a defense or protection~~  
29 ~~provided under Section 11362.5 or Article 2.5 (commencing with~~  
30 ~~Section 11362.7) of Chapter 6, upon the order of the court, the~~  
31 ~~following shall apply:~~

32    ~~(1) Any marijuana, instrument, or paraphernalia seized in the~~  
33 ~~case that was lawfully possessed by the defendant shall be returned~~  
34 ~~to him or her.~~

35    ~~(2) If any marijuana, instrument, or paraphernalia seized in the~~  
36 ~~case that was lawfully possessed by the defendant was damaged~~  
37 ~~or destroyed, the defendant shall receive reasonable compensation~~  
38 ~~for the damage or loss.~~

1     ~~(3) A claim pursuant to this subdivision shall be presented not~~  
2     ~~later than six months after acquittal or dismissal in the case.~~

3     ~~(e) If the court finds that the property was not lawfully possessed~~  
4     ~~by the defendant, law enforcement may request of the court that~~  
5     ~~certain uncontaminated instruments or paraphernalia be~~  
6     ~~relinquished to a school or school district for science classroom~~  
7     ~~education in lieu of destruction.~~

8     SEC. 2. Section 11479 of the Health and Safety Code is  
9     amended to read:

10    11479. Notwithstanding ~~Section 11473 and subdivisions (a)~~  
11    ~~and (e) of Section 11473.5, Sections 11473 and 11473.5~~, at any  
12    time after seizure by a law enforcement agency of a suspected  
13    controlled substance, that amount in excess of 10 pounds in gross  
14    weight, and in the case of growing or harvested marijuana, only  
15    that amount in excess of two pounds, may be destroyed without a  
16    court order by the chief of the law enforcement agency or a  
17    designated subordinate. Destruction shall not take place pursuant  
18    to this section until all of the following requirements are satisfied:

19    (a) At least five random and representative samples have been  
20    taken, for evidentiary purposes, from the total amount of suspected  
21    controlled substances to be destroyed. These samples shall be in  
22    addition to the 10 pounds required above. When the suspected  
23    controlled substance consists of growing or harvested marijuana  
24    plants, at least one two-pound sample (which may include stalks,  
25    branches, or leaves) and five representative samples consisting of  
26    leaves or buds shall be retained for evidentiary purposes from the  
27    total amount of suspected controlled substances to be ~~destroyed~~  
28    ~~and counsel for the defendant shall have 30 days from the date the~~  
29    ~~growing or harvested marijuana was seized to examine the~~  
30    ~~two-pound sample and five representative samples if there are~~  
31    ~~criminal proceedings pending that pertain to the seized growing~~  
32    ~~or harvested marijuana to be destroyed.~~ *destroyed.*

33    (b) Photographs have been taken that reasonably demonstrate  
34    the total amount of the suspected controlled substance to be  
35    destroyed.

36    (c) The gross weight of the suspected controlled substance has  
37    been determined, either by actually weighing the suspected  
38    controlled substance or by estimating that weight after dimensional  
39    measurement of the total suspected controlled substance.

1 (d) The chief of the law enforcement agency has determined  
2 that it is not reasonably possible to preserve the suspected  
3 controlled substance in place, or to remove the suspected controlled  
4 substance to another location. In making this determination, the  
5 difficulty of transporting and storing the suspected controlled  
6 substance to another site and the storage facilities may be taken  
7 into consideration.

8 Subsequent to any destruction of a suspected controlled substance  
9 pursuant to this section, an affidavit shall be filed within 30 days  
10 in the court that has jurisdiction over any pending criminal  
11 proceedings pertaining to that suspected controlled substance,  
12 reciting the applicable information required by subdivisions (a),  
13 (b), (c), and (d) together with information establishing the location  
14 of the suspected controlled substance, and specifying the date and  
15 time of the destruction. In the event that there are no criminal  
16 proceedings pending that pertain to that suspected controlled  
17 substance, the affidavit may be filed in any court within the county  
18 that would have jurisdiction over a person against whom those  
19 criminal charges might be filed.

20 ~~SEC. 3. If the Commission on State Mandates determines that~~  
21 ~~this act contains costs mandated by the state, reimbursement to~~  
22 ~~local agencies and school districts for those costs shall be made~~  
23 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
24 ~~4 of Title 2 of the Government Code.~~